No. 13245

IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

WESTERN AIR LINES, INC.,

Petitioner,

vs.

CIVIL AERONAUTICS BOARD,

Respondent.

REPLY BRIEF OF WESTERN AIR LINES, INC.

GUTHRIE, DARLING & SHATTUCK,
523 West Sixth Street,
Los Angeles 14, California,
Attorneys for Western Air Lines, Inc.

Parker & Company, Law Printers, Los Angeles. Phone MA. 6-9171.

TOPICAL INDEX.

TABLE OF AUTHORITIES CITED

Cases

Statutes

No. 13245

IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

WESTERN AIR LINES, INC.,

Petitioner,

vs.

CIVIL AERONAUTICS BOARD,

Respondent.

REPLY BRIEF OF WESTERN AIR LINES, INC.

Initial Statement.

In its opening brief Western urged two basic principles on which it relies for a reversal of the Order being challenged. The first was that the Order, in fact, amounted to a revocation in part of Western's Route 13, notwithstanding the language employed in an effort to color the act as a suspension, and that the revocation provisions of Section 401(h) of the Act had not been met. The second was that even though the effect of the Order were temporary, and thus a suspension rather than a revocation, the suspension provisions of Section 401(h) do not vest in the Board the power to remake or reshuffle the national air route pattern, in whole or in part.

Neither the brief of the Board nor the brief of Bonanza has presented a valid answer to the principles urged by Western. However, the Board has come forth with what appears to be a suggestion that Section 401(h)

(suspension and revocation of an existing certificate) may be merged with Section 401(d) (issuance of a new certificate), whereby an existing carrier may be taken out of a part or all of a route and a new carrier installed. This theory, if it be the theory urged by the Board, is not good law and calls for comment.

In addition to the two basic principles, Western pointed out that the Order under review is in violation of the Fifth Amendment of the United States Constitution. The Board contends that this point was not urged below and thus must be rejected here. Although Western continues to place only secondary reliance on this proposition, since each of the two basic principles appears to be controlling, the error of the Board's contention will be noted.

SUMMARY OF REPLY ARGUMENT.

1. The Powers Conferred by Section 401(d) and Section 401(h) Are Separate and Must Be Exercised Independently.

The power of the Board to grant a new certificate, permanent or temporary, under Section 401(d), in response to the public convenience and necessity, must stand or fall on its own. The exercise of the power to grant a new certificate or to add to an existing certificate may not be conditioned upon some other act with respect to another air carrier being done concurrently under an independent power.

The power of the Board to order air service discontinued at existing points by amendment or suspension under Section 401(h), in response to the public convenience and necessity, must stand or fall on its own. The exercise of the power may not be conditioned upon

some other act with respect to another air carrier being done concurrently under an independent power.

Bonanza would not have been certificated into El Centro and Yuma unless concurrently Western had been "suspended" out. By the same token, Western would not have been "suspended" out of El Centro and Yuma unless concurrently a new certificate including El Centro and Yuma had been issued to Bonanza. This involuntary shifting of an air route from one air carrier to another is illegal under the Act.

2. The Board May Not Amend a Certificate Under Section 401(h) in a Manner Which Would Cause a Transformation in the Character of the Route.

Even though the Board were within its rights in creating an entirely new section of the Act by merging Section 401(d) with Section 401(h), the power to amend does not include the power to destroy or transform a route. By "amending" or "suspending," whichever may be the case, El Centro and Yuma out of Western's Route 13, the Imperial Valley operation has been eliminated. In principle, this involves the destruction of an entire route and under any approach it involves a basic transformation of Western's Route 13.

3. Section 1006(e) of the Act Does Not Bar Consideration by This Court of the Constitutionality of the Board's Order.

Western did object below to any infringement of its rights under the Fifth Amendment to the United States Constitution in a fashion adequate to permit the point to be urged here.

Should it be held that the point was not urged below with sufficient clarity, the failure must be excused. The Order challenged, dated January 17, 1952, is the second reopened Order of a proceeding which was first heard in 1947. A petition for a third reopening to emphasize the constitutional question would have served only to add further delay to a decision already inordinately delayed.

REPLY ARGUMENT.

1. The Powers Conferred by Section 401(d) and Section 401(h) Are Separate and Must Be Exercised Independently.

(a) Preface.

The main contention urged under this heading is that the Board's position in justification of the Order amounts to a rewriting of the Act by adding a new section containing powers which would result from merging Section 401(d) with Section 401(h).

Neither the Board nor this Court has the power to rewrite the Civil Aeronautics Act. On page 22 of its brief the Board protested that if the validity of a suspension under Section 401(h) were determined on the question of the length of the suspension, the statute would have to be rewritten. This observation by the Board is sound. It is just as sound to protest that a meshing of Section 401(d) with Section 401(h) would involve rewriting the statute.

(b) A New Certificate Under Section 401(d) Can Be granted Only If the Public Convenience and Necessity Require the Transportation Covered by the Application.

On page 15 of its brief the Board noted that its power to alter, amend, modify or suspend an existing certificate under Section 401(h) is based on the same standard of public convenience and necessity under which the Board has the power to grant new certificates under Section 401(d). Western endorses the accuracy of this declaration.

Section 401(a) of the Act provides that no air carrier shall engage in any air transportation unless there is in force a certificate issued by the Board. Sections 401(b) and 401(c) require that the application for a certificate be made in writing and that after notice and a public hearing it be disposed of as expeditiously as possible. Section 401(d) provides for the issuance of a certificate (permanent or temporary) authorizing the whole or any part of the transportation covered by the application, if required by the public convenience and necessity.[1] There is no provision in these sections, or elsewhere in the Act, authorizing the Board to issue a new certificate "upon petition or complaint or upon its own initiative," as is provided in Section 401(h), for the alteration, amendment, modification or suspension of a certificate.

It is important to note that Section 401(d) provides that the Board shall issue a certificate authorizing the whole or any part of "the transportation covered by the application" if it finds that "such transportation is re-

---

[1]For convenience, Section 401 in its entirety is set forth in Appendix A to this Reply Brief.

quired by the public convenience and necessity; otherwise such application shall be denied."

Nowhere is there any provision in any subsection of Section 401, or elsewhere in the Act, under which an application for a new certificate can be granted on condition that some other certificate be amended, suspended or revoked, either in whole or in part, under Section 401(h), or that some other certificate be transferred under Section 401(i), or that some other certificate be abandoned under Section 401(k).

Section 401(f) provides for the inclusion in any certificate of "such reasonable terms, conditions and limitations as the public interest may require." This manifestly does not include the right of the Board to grant a new certificate with a condition that the privileges under the new certificate may be exercised only if some other certificate should be altered, amended, modified, suspended or revoked under Section 401(h) or transferred under Section 401(i) or abandoned under Section 401(k).

If the public convenience and necessity do not require the transportation covered by the application, standing alone and independently of what the Board might do or might be able to do under some other section of the Act, the application must be denied. Section 401(d) would have to be rewritten or a new section added to permit any other interpretation.

The Board concedes that the public convenience and necessity would not have permitted, let alone required, the certification of Bonanza into El Centro and Yuma unless Western had been "suspended" out.

(c) The Amendment or Suspension of an Existing Certificate Under Section 401(h) Cannot Be Predicated Upon a New Certificate Being Granted or Upon Some Voluntary or Involuntary Action With Respect to Some Other Certificate.

Section 401(h) gives the Board the authority upon petition or complaint, or upon its own initiative, to alter, amend, modify or suspend "any such certificate (new certificates issued under Section 401(d)) in whole or in part if the public convenience and necessity so require, . . ." Here, as under Section 401(d), the authority of the Board to act is independent and must stand on its own.

The amendment of an existing certificate by deleting a point or segment, or the suspension of an existing certificate in whole or in part, cannot be dependent upon the concurrent granting of a new complementing certificate to some other air carrier under Section 401(d) or upon the transfer of some other certificate under Section 401(i), or upon the abandonment of some other certificate under Section 401(k).

It need not be decided now whether the alteration, amendment or modification of a certificate must be permanent, as the Board asserts. But assuming that to be so, the Board can only amend a certificate by deleting an intermediate point or a segment if the public convenience and necessity *no longer require service at that point or on the segment*. If the public convenience and necessity do require the service at the point or on the segment in question, it would be contrary to the public convenience and necessity to discontinue service permanently by amendment or temporarily by suspension.

The Board has recognized the verity of this proposition. In the *All American Airways, Suspension Case,*

10 CAB 24 (which is quoted on page 24, footnote 28, in the Board's brief), this was said:

> "We recognize that there is a possible abuse of discretion in an administrative agency in attempting to discipline a carrier by suspending its certificate on the basis of facts which would not justify a revocation. However, it seems apparent that where the record developed after extensive hearing *clearly indicates that the public convenience no longer require a service,*[2] such substantive test is sufficient to prevent any abuse, particularly where procedures remain open, as they do here, whereby interested parties may seek termination of the suspension by the Board."

The Board does not contend that air transportation is not required by the public convenience and necessity at El Centro and Yuma. To the contrary, the Board's entire case is based on the claim, or, perhaps better, the admission, that the public convenience and necessity continue to require air transportation, but that for the time being, and perhaps indefinitely (Board's Br. p. 20), Bonanza should provide the service rather than Western.

The Board concedes that Western would not have been "suspended" out of El Centro and Yuma unless Bonanza had been certificated in.

Section 401(h) does not vest this power in the Board. To give the Board the power it claims it would not be sufficient to rewrite Section 401(d) or Section 401(h). It would be necessary to write an entirely new section embodying a combination of both sections.

---

[2]Emphasis in quoted material is added throughout unless otherwise noted.

(d) A New Section Would Have to Be Added to the Act to Give the Board the Power It Claims.

It is Hornbook law that an administrative agency has only the powers conferred upon it by Congress.[3]

The new section which would have to be added to the Act before the Board would have the power to do what it seeks to do here would mesh together the essential features of Sections 401(d) and 401(h), and might read somewhat along these lines:

> "Authority to Issue a New or Amended Certificate in Lieu of an Existing Certificate.
>
> The Authority [Board], upon petition or complaint or upon its own initiative, after notice and hearing, may alter, amend, modify or suspend two or more such certificates, in whole or in part, by providing that the transportation authorized by any one of such certificates shall be eliminated, in whole or in part, and added, in whole or in part, to one or more others of such certificates, or included in one or more new certificates, if the public convenience and necessity so require. The Authority [Board] shall have the power under this Section to redesign from time to time the national air route pattern, and, if the Authority [Board] establishes classifications or groups of air carriers under Section 416, the Au-

---

[3]"The Commission is an administrative body possessing only such powers as are granted by statute. It may make only such orders as the Act authorizes; may order a practice to be discontinued and shares held in violation of the Act to be disposed of; but, that accomplished, has not the additional powers of a court of equity to grant other and further relief by ordering property of a different sort to be conveyed or distributed, on the theory that this is necessary to render effective the prescribed statutory remedy." *Arrow-Hart & Hegeman Electric Co. v. F. T. C.* (1933), 291 U. S. 587, at 598, 78 L. Ed. 1007, at 1013.

> thority [Board] may transfer any such certificate in whole or in part from an air carrier in one classification or group to an air carrier in another classification or group, or from one air carrier to another air carrier in the same classification or group, if the public convenience and necessity so require. No air carrier shall be deprived of property or property rights under this Section without just compensation. Any interested person may file with the Authority [Board] a protest or memorandum in support of or in opposition to the alteration, amendment, modification, suspension, transfer or issuance of a certificate under this Section."

A section containing this language would give the Board the power to recast the national air route pattern and the power to shift existing air transportation service from one carrier to another. Without a section reading somewhat as the sample does the Board does not have the power to do what it attempted to do here.[4]

It may be that it would be entirely proper and fully in keeping with the public interest that the Board have the great power it now claims. Perhaps it would be in the public interest if the Board had the authority to tell

---

[4]On page 30 of its brief the Board has cited and quoted from *Pan American-Grace Airways v. Civil Aeronautics Board,* 178 F. 2d 34 (C. A., D. C., 1948), in support of its position. It is thought that reference to this case by the Board must have been with tongue slightly in cheek. Panagra had filed a petition with the Board to suspend Braniff's South American certificate. The Board dismissed the petition without acting on it. The only issue on appeal was the Board's order dismissing the petition. The court noted at page 36, "The Board's decision simply was that the petition did not warrant the inquiry, a ruling tantamount to a court's order sustaining a demurrer to a petition or complaint."

Western that its service at El Centro and Yuma was feeder in nature and should be operated by Bonanza, or to tell United Air Lines that its service from San Diego to Seattle was regional in nature and should be operated by Western, or even to tell American Airlines, Trans-World Air Lines and United Air Lines that it would be more in keeping with the public interest to have their three trans-continental services consolidated into one. But Congress, not this Court, is the forum in which the merits of such extraordinary power should be debated.

The fact remains that the Act does not grant the power the Board claims. If Congress had intended to vest in the Board the power to remake the air map or to shift service from one air carrier to another or from one class to another class, that power would not have been obscured in the language used in Section 401(h). Mr. Justice Clark recently made this apposite remark in *Brannan v. Stark,* 72 S. Ct. 433 (March 3, 1952), at page 439:

> "We do not think it likely that Congress, in fashioning this intricate marketing order machinery would thus hang one of the main gears on the tail pipe."

Had Congress intended to give the Board the power, now requisitioned by it, to shift routes or stations from one air carrier to another, or to eject one air carrier from a station or an area in favor of a new air carrier or another existing air carrier, or to redesign the national air route pattern, unmistakable language to that effect would have to be employed, since such a broad and extraordinary power would be one of the main gears of the Civil Aeronautics Act. That gear would not have been hung on the "suspension" tail pipe.

(e) The Construction of Section 401(h) Urged by the Board Would Negate Other Sections of the Act.

As added support for its argument that the Board's Order amounts to revocation and not simply suspension, commencing on page 20 of its opening brief, Western quoted the Board's order instituting an investigation to determine whether an integration of the routes of Southwest and Bonanza into a single unified system would be in the public interest. It was argued that the order instituting the investigation would not have been issued had not the Board thought real merit existed to the consolidation of the two systems and that were they consolidated Bonanza's "temporary" route between Phoenix and Los Angeles most certainly would become permanent.

In an attempt to soften the implications of that disclosure, Bonanza pointed out that the Board's power with respect to mergers, consolidations or acquisitions of control stems from Section 408 of the Act.[5] This statement is found in Bonanza's brief, commencing on page 26:

> "Moreover, and this should be of particular interest to the court, the Board has no statutory authority to order a merger. The Board's power with respect to mergers is derived from Section 408 of the Act, and is subject to the requirement that an *application*[6] for merger, consolidation, acquisition of control, etc., must be submitted to the Board for approval, and a public hearing must be held thereon.
>
> "The Board's power in this respect does not therefore come into being until an application is submitted

[6]Emphasis included.

---

[5]A copy of Section 408 of the Act in its entirety appears as Appendix B to this Reply Brief.

> for its approval. The statute does not confer any authority on the Board to initiate a merger proceeding. Thus, in effect, the Board has only a ratification power and a veto power with respect to mergers, consolidations, etc."

Bonanza is quite correct in its interpretation of Section 408. The Board does not have the power to force a consolidation or merger of air carriers any more than the Board has the power to redesign the national air route pattern, in whole or in part. But if the Board could do under Section 401(h) what it has professed to do here, it could force a consolidation, merger or acquisition of control just as effectively and just as quickly as it could if Section 408 gave the Board the affirmative implementing power rather than simply the negative vetoing power.

Inasmuch as the Board has initiated an investigation concerning the desirability of unifying the systems of Southwest and Bonanza by means of merger, consolidation, acquisition of control or route transfer, the background for a good example is offered. If, following completion of that investigation, the Board were to determine that the public interest would be served by unifying the two systems, it would be necessary only for the Board to suggest to the two feeder air carriers that this be accomplished voluntarily and promptly. If either air carrier should demur, it would be necessary only for the Board to initiate a proceeding under Section 401(h), and, after giving notice and holding a perfunctory hearing, order Southwest's route (or Bonanza's) suspended in whole, and Bonanza's (or Southwest's) amended to include the suspended route. After sufficient time had passed—perhaps five years, maybe ten years—to reach

the danger point of having the suspension construed as revocation, the Board could rely on the suspended air carrier having withered away to a noncombative status.

Assuredly, this would not be a worthy use of a self-implemented weapon. But if the Board can eject Western from its Imperial Valley Route and install Bonanza in that route under its interpretation of Section 401(h), it can use the same interpretation to override Section 408.

Section 401(i), which is included in Appendix A, provides that no certificate may be transferred unless the transfer is approved by the Board as being consistent with the public interest. Here again, the Board's power is negative only. The Board does not have the direct power to compel an air carrier to transfer one of its certificates to some other air carrier.

Section 401(k), likewise in Appendix A, provides that no air carrier shall abandon any route or any part of a route for which a certificate has been issued unless upon *application of the air carrier,* after notice and hearing, the Board shall find the abandonment to be in the public interest. Here, too, the Board has only the negative vetoing power, not the affirmative implementing power. But once again, if the Board's interpretation of Section 401(h) be accepted by this Court it could force under Section 401(h) the equivalent of an abandonment, which it is prohibited from doing directly under Section 401(k).

No executive branch of the federal or a state government is legally allowed to do by indirection that which it

is not authorized to do directly.[7] A judicial bulwark against an invasion of this principle of law becomes doubly important when a statute is not just silent, but speaks against a power, as in the Civil Aeronautics Act with respect to compelling a merger of air carriers, a transfer of a certificate and the abandonment of a certificate.

At this point it is well to note that Congress withheld giving the power to the Board to act affirmatively in several specific situations, regardless of the public convenience and necessity. Without room for doubt, there exist today instances where the merger of two or more air carriers would be greatly in the public interest. Unquestionably, the public convenience and necessity would be served in high degree if some existing permanent certificates could be transferred in whole or in part from the holding air carriers to other air carriers. But the power to accomplish objectives of this nature, however much they might be in the public interest, was not conferred upon the Board by Congress. Thus the Board's argument, which seems to be implicit here, that Congress must have given the Board the power to act affirmatively wherever and whenever, in the Board's opinion, the public convenience and necessity would be fostered lacks substance as well as legal merit.

---

[7] *In re Robelen*, 3 Del. 314 (1926), 136 Atl. 279, at 280, the Superior Court of Delaware said:

> "It [statute] will not be so construed as to allow to be done by indirection what may not be done directly."

In *Sharp v. State*, 54 Ind. App. 182 (1912), 99 N. E. 1072, at 1076, the court noted:

> "To carry out effectually the object of a statute, it must be so construed as to defeat all attempts to do or avoid in an indirect or circuitous manner that which it has prohibited or enjoined."

2. The Board May Not Amend a Certificate Under Section 401(h) in a Manner Which Would Cause a Transformation in the Character of the Route.

(a) The Restricted Powers Under Section 401(h) Are in Keeping With the Objectives of the Act.

In its opening brief, commencing on page 35, Western acknowledged that under Section 401(h) the Board does have the power under some circumstances to suspend a certificate in whole or in part. As examples of the proper application of the suspension power, reference was made to a once sizable and prosperous community becoming impoverished and depopulated because of the exhaustion of nearby mines or because of the decommissioning of a major army base. Nothing in the briefs of the Board, Bonanza or Midwest and Wisconsin Central lends conviction that the interpretation placed by Western on the suspension power under Section 401(h) can be enlarged to empower the Board to order the equivalent of a transfer of a certificate, the abandonment of a certificate, or the merger or consolidation of the systems of two air carriers.

If, for a temporary or indeterminate period, the public no longer needs air transportation at a given point or in a given area, it is right that the Board on its own initiative should be able to compel the suspension of that service, or, under an application, permit it. It is right that upon the removal of the condition which justified the suspension the suspended air carrier be restored to its rights and privileges. But if the public still needs the air transporation being provided by a certificated air carrier, it is not the right that the Board, under the guise of Section 401(h) or otherwise, should be able to suspend the opera-

tions of that air carrier and install another air carrier on the supposition that the other air carrier might do a better job or a cheaper job (or, perhaps, as here, a more expensive job) than the existing air carrier.

(b) The Amending Powers Under Section 401(h) Are Limited.

In its brief, commencing on page 18, the Board contended that its alternative was not "suspension" against "revocation," but rather "suspension" against "alteration, amendment or modification." The implication, if not the direct assertion, is that alteration, amendment or modification is permanent, and, therefore, greater than suspension, which is temporary. From this the reasoning is implied that the greater includes the lesser, and that the Board could have amended the Imperial Valley Route out of Western's system instead of "temporarily" suspending it out. It thus becomes proper to discuss the extent of the Board's power to alter, amend or modify a certificate in whole or in part under Section 401(h).[8]

At the outset it is conceded, but only for the purposes of this argument, that the alteration, amendment or modification of a route under Section 401(h) must be permanent. Otherwise the addition of the right to suspend in whole or in part would seem to be surplusage.

---

[8]In accepting the challenge of debate, Western does not agree that under the Board's own theory its alternative was "suspension" against "alteration, amendment or modification". Since the Board elected to continue the masquerade of an impermanent experiment concerning feeders, it could not have "altered, amended or modified" Western out of El Centro and Yuma and still have issued a purportedly temporary certificate putting Bonanza in those two points. Nonetheless, it is proper to point out that even though the Board had had the alternative it claims, it would not have had anymore legal right permanently to amend Western out of El Centro and Yuma than it had "temporarily" to suspend out those points.

The Board, commencing on page 15 of its brief, acknowledged that its right to alter, amend or modify a certificate is limited to such changes as would not work a basic transformation in the character of the route. Hence, it is not necessary to argue that the term "in whole or in part" refers back only to "suspension" and not to "alter, amend and modify."[9]

Although the Board's concession removes the need for any debate that the amending power cannot be used to transform a route, note should be made of the significance of this limited power. Conceivably, an entire air route could become valueless to the public, Still, Congress did not deem it appropriate to give the Board the power permanently to cancel such a route. This increases the stature of Western's insistent contention that stability of certificates is a predominating objective of the Act.

It is not necessary in this proceeding to place a rigid hedge around the powers Congress intended to confer by using the words "alter, amend and modify" in the first part of Section 401(h). Western agrees with the Board, and the obvious, that a permanent alteration, amendment

---

[9]In *Cross v. Nee,* 18 F. Supp. 589, at 594 (D. C., Mo., 1936), the three words are defined in this manner:

> "To 'amend' is to change for the better by removing defects or faults. It refers to that which falls short of excellence. To 'modify' is to make different by change of quality. To 'alter' is to change partially. To 'change' is much broader than the others, and means to make a thing distinctively other than it has been."

In *McCleary v. Babcock,* 82 N. E. 453, at 455 (1907), the Indiana Supreme Court defined "amend" in this style:

> "The word 'amend' is synonymous with correct, reform, and rectify. It means a correction of errors, an improvement or rectification, and necessarily implies something on which the correction, alteration, and improvement can operate. It indicates a change or modification for the better."

or modification of a certificate cannot work a basic transformation of the character of the route. If the Board contend, as evidently it does, that the permanent alteration, amendment or modification of Western's Route 13 to eliminate the Imperial Valley operation would not effect a basic transformation of the character of that route, Western is in sharp disagreement. This will be discussed later.

Western urges that two fundamental factors attach to the Board's power to alter, amend or modify a route under Section 401(h). The first is that the power can be employed only to make that particular route better, more valuable to the public, by enabling the existing air carrier to perform a more acceptable and a more convenient service. It does not include the power to make a double shift or a contingent amendment whereby one air carrier may perform more or less service so another air carrier concurrently may perform less or more service. It does not include the power indirectly to compel the transfer of all or part of a certificate from one air carrier to another air carrier. It does not include the power to compel by indirection one air carrier to abandon a route in whole or in part and allow another air carrier to serve the abandoned area or stations.

If the public no longer need service at a particular point, and for the foreseeable future will not again need that service (permanent exhaustion of a mine or permanent decommissioning of an army base, as examples), the Board should have, and does have, the power to amend that point out of the certificate. If, on the other hand, an existing community, such as El Centro, continue to have need for the existing service, the Board should not have, and does not have, the power to make a double shift

by amending the existing air carrier out and certificating a new air carrier in. This is so because the amending power under Section 401(h) does not contemplate a conditional amendment, the amending out of one air carrier conditioned on the certification in of some other air carrier. The amending power does not embrace the power to do indirectly what the Board is prohibited from doing directly—forcing the transfer in whole or in part of a certificate, forcing a merger, consolidation or acquisition of control, or forcing an abandonment of a route or segment by one air carrier in order that another air carrier may be installed.

(c) Elimination of Western's Imperial Valley Operation Would Be a Major Transformation.

Western's Route 13 covering 1039 miles runs from San Diego to Salt Lake City via Los Angeles, Las Vegas and other intermediate routes. Officially, El Centro and Yuma, as well as Palm Springs and San Bernardino, are intermediate points between San Diego and Los Angeles. In fact and in practice, San Bernardino and Palm Springs are served in the main as a separate route out of Los Angeles and El Centro and Yuma are served as a separate route out of San Diego in connection with the Los Angeles-San Diego service.[10]

---

[10]The Board recognizes that the Imperial Valley operation, in fact, is a separate route, as indicated by this language which appears on page 4 of its brief:

> "Western at that time held a certificate authorizing operations over a circular route extending from San Diego to Los Angeles via El Centro, Yuma, Palm Springs, San Bernardino and Long Beach (Route No. 13). *However, Western had operated this route largely as if it were two separate routes, conducting operations* between Los Angeles-Palm Springs, and *between Los Angeles and Yuma via San Diego and El Centro,* usually on flights originating north of Los Angeles on other routes operated by Western."

If realities are ignored by labeling El Centro and Yuma as two intermediate points of minor importance, and if it were assumed, contrary to fact, that El Centro and Yuma do not need air transportation, it could be argued that their amendment or suspension out of Route 13 would not accomplish a significant transformation of the route. But to reason on this tack would be faulty in two particulars. It would reject the truth that El Centro and Yuma in effect constitute the entire Imperial Valley route and it would deny the need of El Centro and Yuma for air service, which greatly exceeds the normal population index requirements because of relative isolation, poor ground transportation and climatic conditions.

If the real facts be placed in proper perspective, the elimination of El Centro and Yuma from Western's Route 13 will be recognized not only as a basic transformation of Route 13 but also as the complete elimination of what amounts to an entire route, even though it is included under the certificate for Route 13. San Diego to Yuma by way of El Centrol involves 151 air miles. This is 100% of the San Diego-Yuma Imperial Valley route. It is 58.08% of the Los Angeles-San Diego-Yuma operation and 14.53% of the full Route 13.

United Air Lines' Route 1 extends from San Francisco (and Los Angeles) to New York, which was the original Route 1, and from Seattle to San Diego, which originally was Route 11, totalling 8199 unduplicated air miles. The San Diego-Seattle segment involving 1130 miles, is 13.78% of United's Route 1. United's north-south San Diego-Seattle operation is regional in nature and bears little resemblance to its direct San Francisco

(and Los Angeles)-New York east-west transcontinental operation.

If the amendment or suspension out of Western's Imperial Valley operation be interpreted as no more than a minor adjustment to Route 13, the Board will face no legal problems in amending out United's West Coast operation. The argument that an involuntary transfer of Western's Imperial Valley Route to Bonanza should be and can be ordered by the Board under the cloak of Section 401(h), purportedly because the service needed at El Centro essentially is feeder, could be urged just as logically and just as forcefully with respect to the amendment or suspension out of United's West Coast regional operation in favor of Western.

(d) Legislative Limitations May Not Be Judicially Enlarged.

Perhaps Congress was short-sighted in not adding to the Act a section cast in the language of the sample printed on page 9 of this brief in order that the Board could do as it seeks to do here and get along with its avowed determination to redesign the national air route pattern. Perhaps Congress should have given the Board the affirmative initiating power, rather than just the negative vetoing power, over mergers, consolidations and acquisitions of control. Possibly it would have been in the public interest had Congress empowered the Board to compel the transfer of certificates from one air carrier to another, in whole or in part, and compel one air carrier to abandon a route in whole or in part. But this lack of

wisdom on the part of Congress, be it that, cannot be corrected by the Board on its own initiative or by this Court.

Even though Section 401(h) in particular and the Civil Aeronautics Act from its four corners would permit, with a little pulling and hauling, the interpretation proclaimed by the Board in order that the Board might carry forward its redesigning and reshuffling program, the result necessarily would impale another acknowledged and clear policy of the Act, the implementation of stability in the industry. Relating to this, Mr. Justice Byrnes in *Southern S. S. Company v. National Labor Relations Board,* 316 U. S. 31, at 41 (1941), 86 L. Ed. 1246, at 1259, declared:

> "It is sufficient for this case to observe that the Board has not been commissioned to effectuate the policies of the Act so single-mindedly that it may wholly ignore other and equally important objectives. Frequently the entire scope of legislative purposes calls for careful accommodation of one statutory scheme to another and it is not too much to demand of an administrative body that it undertake this accommodation without excessive emphasis upon its own immediate task."

A better example of the practice condemned by the Supreme Court could not be found than the one being challenged in this case. If the Board's single-minded insistence on promoting the feeder experiment, reshuffling route structures and redesigning the national air pattern be given a clearance by this Court, the instability in the air transportation industry that Congress, by the Civil Aeronautics Act, thought had been laid low will be revived in full blossom.

3. Section 1006(e) Does Not Bar Consideration by This Court of the Constitutionality of the Board's Order.

Western did not categorically charge below that the treatment it received was in violation of the Fifth Amendment of the United States Constitution. However, general argument advanced by Western preceding the original order, preceding the first reopened order and preceding the final Order now being challenged, implicitly, if not explicitly, embraced a warning that if the Board ultimately were to do what finally it did do a constitutional violation would result.

In Western's petition to the Board for reconsideration of the first reopened order, these comments appear:

> "At this point the Board is wielding a heavy club but still recognizes property rights, contract rights, personal rights, the decent treatment expected to be administered in commercial dealings and, above all else, the Constitution of the United States," (P. 8.)
>
> * * * * * * *
>
> "The Court of Appeals of Texas in *Houston & North Texas Freight Lines v. Johnson,* 159 S. W. 2d 905, noted at page 907:
>
> " 'But it affixes to certificates clear and undoubted property rights, and propery rights are subject to the rule of law applicable to property rights.' " (P. 14.)
>
> * * * * * * *

"The evil, in addition to the illegality, of determining an issue in the absence of a record, may be illustrated with a couple of questions. Does Western have any ground leases at El Centro and Yuma and if so, what are the obligations and what would it cost to escape those obligations, if escapable? Does Western own the airports at Yuma and El Centro, and if so, what was Western's investment and would Western make a lease to Southwest? Did Western install any hangars or other non-removable buildings or structures at El Centro and Yuma and if so, how much did they cost? Could Western salvage any of its investment in ground facilities at El Centro and Yuma and if so, what will be the resulting profit or loss? What personnel problems would accrue to Western?" (P. 21.)

The Board was forewarned in adequate language that the Fifth Amendment was involved and had an ample opportunity to avoid the error it made. This is all that need be done to comply with Section 1006(e) of the Act.

Even though it were held that the approach to the matter taken by Western below did not constitute an urging of the point as required by the section, reasonable exculpatory grounds for the failure exist.

The original hearing before an examiner of the Board was completed on November 6, 1947. The original opinion of the Board was issued on June 15, 1949. The first reopened or supplemental opinion was dated December 19, 1949. The second reopened opinion

which is here under review is dated January 17, 1952. A petition below to reconsider the third and last Order, which came out more than four years after the original hearing had been completed, simply to call specific attention to the constitutional issue which implicitly was before the Board would have been a minor travesty on judicial process. Disinclination to prolong further a proceeding already prolonged beyond reason would appear to be a reasonable ground for the failure, if in fact it were a failure.

Beyond the technical objection urged, the constitutional argument presented by Western, firmly if briefly, has not been challenged effectively by the Board, the Intervenor or the *Amicus* parties.

It is proper to end this subject with the words of Mr. Justice Holmes in *Pennsylvania Coal Co. v. Mahon,* 260 U. S. 393, at 416, 67 L. Ed. 322, at 326 (1922), where he said:

> "We are in danger of forgetting that a strong public desire to improve the public condition is not enough to warrant achieving the desire by a shorter cut than the constitutional way of paying for the change . . ."

Even though the Act gave the Board the power it is reaching for, and even though the activation of that power in the manner in which the Board seeks to put it in motion, were in the public interest, the safeguards provided by the Constitution may not be laid aside.

Conclusion.

To sustain the Board's Order words must be read into the Act which were not placed there by Congress. This in turn would lend judicial endorsement to the Board's single-minded self-implemented policy of shifting routes and redesigning the national air route pattern at the expense of stability in the air transportation industry.

The Order should be reversed in language that will put an end to the uncertainty attending the meaning and significance of Section 401(h) of the Act.

Los Angeles, California, April 17, 1952.

Respectfully submitted,

GUTHRIE, DARLING & SHATTUCK,
By HUGH W. DARLING,
Attorneys for Western Air Lines, Inc.

Certificate of Service.

I certify that I am an associate of the firm of Guthrie, Darling & Shattuck, attorneys for Western Air Lines, Inc., and that on this date I will have caused this brief to be served upon the attorneys for Civil Aeronautics Board, Bonanza Air Lines, Inc., Southwest Airways Company, United Air Lines, Inc., Mid-West Airlines, Inc. and Wisconsin Central Airlines, Inc. by mailing three copies to each, properly addressed with postage prepaid.

Los Angeles, California, April 17, 1952.

FRANK DE MARCO, JR.

APPENDIX A.

Section 401 of the Civil Aeronautics Act.

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

Certificate Required

SEC. 401 [*52 Stat. 987, 49 U. S. C. 481*] (a) No air carrier shall engage in any air transportation unless there is in force a certificate issued by the Authority authorizing such air carrier to engage in such transportation: *Provided,* That if an air carrier is engaged in such transportation on the date of the enactment of this Act, such air carrier may continue so to engage between the same terminal and intermediate points for one hundred and twenty days after said date, and thereafter until such time as the Authority shall pass upon an application for a certificate for such transportation if within said one hundred and twenty days such air carrier files such application as provided herein.

Application for Certificate

(b) Application for a certificate shall be made in writing to the Authority and shall be so verified, shall be in such form and contain such information, and shall be accompanied by such proof of service upon such interested persons, as the Authority shall by regulation require.

Notice of Application

(c) Upon the filing of any such application, the Authority shall give due notice thereof to the public by posting a notice of such application in the office of the secretary of the Authority and to such other persons as the Authority may by regulation determine. Any interested person may file with the Authority a protest or memoran-

dum of opposition to or in support of the issuance of a certificate. Such application shall be set for public hearing, and the Authority shall dispose of such application as speedily as possible.

Issuance of Certificate

(d) (1) The Authority shall issue a certificate authorizing the whole or any part of the transportation covered by the application, if it finds that the applicant is fit, willing, and able to perform such transportation properly, and to conform to the provisions of this Act and the rules, regulations, and requirements of the Authority hereunder, and that such transportation is required by the public convenience and necessity; otherwise such application shall be denied.

(2) In the case of an application for a certificate to engage in temporary air transportation, the Authority may issue a certificate authorizing the whole or any part thereof for such limited periods as may be required by the public convenience and necessity, if it finds that the applicant is fit, willing, and able properly to perform such transportation and to conform to the provisions of this Act and the rules, regulations, and requirements of the Authority hereunder.

Existing Air Carriers

(e) (1) If any applicant who makes application for a certificate within one hundred and twenty days after the date of enactment of this Act shall show that, from May 14, 1938, until the effective date of this section, it, or its predecessor in interest, was an air carrier, continuously operating as such (except as to interruptions of service over which the applicant or its predecessor in interest had

no control), the Authority, upon proof of such fact only, shall, unless the service rendered by such applicant for such period was inadequate and inefficient, issue a certificate or certificates, authorizing such applicant to engage in air transportation (A) with respect to all classes of traffic for which authorization is sought, except mail, between the terminal and intermediate points between which it, or its predecessor, so continuously operated between May 18, 1938, and the effective date of this section, and (B) with respect to mail and all other classes of traffic for which authorization is sought, between the terminal and intermediate points between which the applicant or its predecessor was authorized by the Postmaster General prior to the effective date of this section, to engage in the transportation of mail: *Provided,* That no applicant holding an air-mail contract shall receive a certificate authorizing it to serve any point not named in such contract as awarded to it and not served by it prior to April 1, 1938, if any other air carrier competitively serving the same point under authority of a contract as awarded to such air carrier shall prove that it is adversely affected thereby, and if the Authority shall also find that transportation by the applicant to and from such point is not required by the public convenience and necessity.

(2) If paragraph (1) of this subsection does not authorize the issuance of a certificate authorizing the transportation of mail between each of the points between which air-mail service was provided for by the Act of Congress making appropriations for the Treasury Department and the Post Office Department, approved March 28, 1938, the Authority shall, notwithstanding any other provision of this Act, issue certificates authorizing the transportation

of mail, and all other classes of traffic for which authorization is sought, between such points, namely, (A) from Wichita, Kansas, to Pueblo, Colorado, via intermediate cities; (B) from Bismark, North Dakota, to Minot, North Dakota; (C) from Detroit, Michigan, to Sault Sainte Marie, Michigan, via intermediate cities; (D) from Brownsville, Texas, via Corpus Christi, to Houston to San Antonio, Texas; (E) from Phoenix, Arizona, to Las Vegas, Nevada, via intermediate cities; (F) from Jacksonville, Florida, to New Orleans, Louisiana, via intermediate cities; (G) from Tampa, Florida, to Memphis, Tennessee, via intermediate cities, and from Tampa, Florida, to Atlanta, Georgia, via intermediate cities (which projects have been advertised); and (H) by extension from Yakima, Washington, to Portland, Oregon; and (I) by extension from Grand Rapids, Michigan, to Chicago, Illinois.

Terms and Conditions of Certificate

(f) Each certificate issued under this section shall specify the terminal points and intermediate points, if any, between which the air carrier is authorized to engage in air transportation and the service to be rendered; and there shall be attached to the exercise of the privileges granted by the certificate, or amendment thereto, such reasonable terms, conditions, and limitations as the public interest may require. A certificate issued under this section to engage in foreign air transportation shall, insofar as the operation is to take place without the United States, designate the terminal and intermediate points only insofar as the Authority shall deem practicable, and otherwise shall designate only the general route or routes to be followed. Any air carrier holding a certificate for foreign

air transportation shall be authorized to handle and transport mail of countries other than the United States. No term, condition, or limitation of a certificate shall restrict the right of an air carrier to add to or change schedules, equipment, accommodations, and facilities for performing the authorized transportation and service as the development of the business and the demands of the public shall require. No air carrier shall be deemed to have violated any term, condition, or limitation of its certificate by landing or taking off during an emergency at a point not named in its certificate or by operating in an emergency, under regulations which may be prescribed by the Authority, between terminal and intermediate points other than those specified in its certificate. Any air carrier may make charter trips or perform any other special service, without regard to the points named in its certificate, under regulations prescribed by the Authority.

Effective Date and Duration of Certificate

(g) Each certificate shall be effective from the date specified therein, and shall continue in effect until suspended or revoked as hereinafter provided, or until the Authority shall certify that operation thereunder has ceased, or, if issued for a limited period of time under subsection (d)(2) of this section, shall continue in effect until the expiration thereof, unless, prior to the date of expiration, such certificate shall be suspended or revoked as provided herein, or the Authority shall certify that operations thereunder have ceased: *Provided,* That if any service authorized by a certificate is not inaugurated

of mail, and all other classes of traffic for which authorization is sought, between such points, namely, (A) from Wichita, Kansas, to Pueblo, Colorado, via intermediate cities; (B) from Bismark, North Dakota, to Minot, North Dakota; (C) from Detroit, Michigan, to Sault Sainte Marie, Michigan, via intermediate cities; (D) from Brownsville, Texas, via Corpus Christi, to Houston to San Antonio, Texas; (E) from Phoenix, Arizona, to Las Vegas, Nevada, via intermediate cities; (F) from Jacksonville, Florida, to New Orleans, Louisiana, via intermediate cities; (G) from Tampa, Florida, to Memphis, Tennessee, via intermediate cities, and from Tampa, Florida, to Atlanta, Georgia, via intermediate cities (which projects have been advertised); and (H) by extension from Yakima, Washington, to Portland, Oregon; and (I) by extension from Grand Rapids, Michigan, to Chicago, Illinois.

Terms and Conditions of Certificate

(f) Each certificate issued under this section shall specify the terminal points and intermediate points, if any, between which the air carrier is authorized to engage in air transportation and the service to be rendered; and there shall be attached to the exercise of the privileges granted by the certificate, or amendment thereto, such reasonable terms, conditions, and limitations as the public interest may require. A certificate issued under this section to engage in foreign air transportation shall, insofar as the operation is to take place without the United States, designate the terminal and intermediate points only insofar as the Authority shall deem practicable, and otherwise shall designate only the general route or routes to be followed. Any air carrier holding a certificate for foreign

air transportation shall be authorized to handle and transport mail of countries other than the United States. No term, condition, or limitation of a certificate shall restrict the right of an air carrier to add to or change schedules, equipment, accommodations, and facilities for performing the authorized transportation and service as the development of the business and the demands of the public shall require. No air carrier shall be deemed to have violated any term, condition, or limitation of its certificate by landing or taking off during an emergency at a point not named in its certificate or by operating in an emergency, under regulations which may be prescribed by the Authority, between terminal and intermediate points other than those specified in its certificate. Any air carrier may make charter trips or perform any other special service, without regard to the points named in its certificate, under regulations prescribed by the Authority.

Effective Date and Duration of Certificate

(g) Each certificate shall be effective from the date specified therein, and shall continue in effect until suspended or revoked as hereinafter provided, or until the Authority shall certify that operation thereunder has ceased, or, if issued for a limited period of time under subsection (d)(2) of this section, shall continue in effect until the expiration thereof, unless, prior to the date of expiration, such certificate shall be suspended or revoked as provided herein, or the Authority shall certify that operations thereunder have ceased: *Provided,* That if any service authorized by a certificate is not inaugurated

within such period, not less than ninety days, after the date of the authorization as shall be fixed by the Authority, or if, for a period of ninety days or such other period as may be designated by the Authority, any such service is not operated, the Authority may by order, entered after notice and hearing, direct that such certificate shall thereupon cease to be effective to the extent of such service.

Authority to Modify, Suspend, or Revoke

(h) The Authority, upon petition or complaint or upon its own initiative, after notice and hearing, may alter, amend, modify, or suspend any such certificate, in whole or in part, if the public convenience and necessity so require, or may revoke any such certificate, in whole or in part, for intentional failure to comply with any provision of this title or any order, rule, or regulation issued hereunder or any term, condition, or limitation of such certificate: *Provided,* That no such certificate shall be revoked unless the holder thereof fails to comply, within a reasonable time to be fixed by the Authority, with an order of the Authority commanding obedience to the provision, or to the order (other than an order issued in accordance with this proviso), rule, regulation, term, condition, or limitation found by the Authority to have been violated. Any interested person may file with the Authority a protest or memorandum in support of or in opposition to the alteration, amendment, modification, suspension, or revocation of a certificate.

Transfer of Certificate

(i) No certificate may be transferred unless such transfer is approved by the Authority as being consistent with the public interest.

Certain Rights Not Conferred by Certificate

(j) No certificate shall confer any proprietary, property, or exclusive right in the use of any air space, civil airway, landing area, or air-navigation facility.

Application for Abandonment

(k) No air carrier shall abandon any route, or part thereof, for which a certificate has been issued by the Authority, unless, upon the application of such air carrier, after notice and hearing, the Authority shall find such abandonment to be in the public interest. Any interested person may file with the Authority a protest or memorandum of opposition to or in support of any such abandonment. The Authority may, by regulations or otherwise, authorize such temporary suspension of service as may be in the public interest.

Compliance With Labor Legislation

(l) (1) Every air carrier shall maintain rates of compensation, maximum hours, and other working conditions and relations of all of its pilots and copilots who are engaged in interstate air transportation within the continental United States (not including Alaska) so as to conform with decision numbered 83 made by the National Labor Board on May 10, 1934, notwithstanding any limitation therein as to the period of its effectiveness

(2) Every air carrier shall maintain rates of compensation for all of its pilots and copilots who are engaged in overseas or foreign air transportation or air transportation wholly within a Territory or possession of the United States, the minimum of which shall be not less, upon an annual basis, than the compensation required to be paid under said decision 83 for comparable service to

pilots and copilots engaged in interstate air transportation within the continental United States (not including Alaska).

(3) Nothing herein contained shall be construed as restricting the right of any such pilots or copilots, or other employees, of any such air carrier to obtain by collective bargaining higher rates of compensation or more favorable working conditions or relations.

(4) It shall be a condition upon the holding of a certificate by any air carrier that such carrier shall comply with title II of the Railway Labor Act, as amended.

(5) The term "pilot" as used in this subsection shall mean an employee who is responsible for the manipulation of or who manipulates the flight controls of an aircraft while under way including take-off and landing of such aircraft, and the term "copilot" as used in this subsection shall mean an employee any part of whose duty is to assist or relieve the pilot in such manipulation, and who is properly qualified to serve as, and holds a currently effective airman certificate authorizing him to serve as, such pilot or copilot.

Requirement as to Carriage of Mail

(m) Whenever so authorized by its certificate, any air carrier shall provide necessary and adequate facilities and service for the transportation of mail, and shall transport mail whenever required by the Postmaster General. Such air carrier shall be entitled to receive reasonable compensation therefor as hereinafter provided.

Application for New Mail Service

(n) Whenever, from time to time, the Postmaster General shall find that the needs of the Postal Service require the transportation of mail by aircraft between any points within the United States or between the United States and foreign countries, in addition to the transportation of mail authorized in certificates then currently effective, the Postmaster General shall certify such finding to the Authority and file therewith a statement showing such additional service and the facilities necessary in connection therewith, and a copy of such certification and statement shall be posted for at least twenty days in the office of the secretary of the Authority. The Authority shall, after notice and hearing, and if found by it to be required by the public convenience and necessity, make provision for such additional service, and the facilities necessary in connection therewith, by issuing a new certificate or certificates or by amending an existing certificate or certificates in accordance with the provisions of this section.

APPENDIX B.

Section 408 of the Civil Aeronautics Act.

CONSOLIDATION, MERGER, AND ACQUISITION OF CONTROL

Acts Prohibited

SEC. 408 [*52 Stat. 1001, 49 U. S. C. 488*] (a) It shall be unlawful unless approved by order of the Authority as provided in this section—

(1) For two or more air carriers, or for any air carrier and any other common carrier or any person engaged in any other phase of aeronautics, to consolidate or merge their properties, or any part thereof, into one person for the ownership, management, or operation of the properties theretofore in separate ownerships;

(2) For any air carrier, any person controlling an air carrier, any other common carrier, or any person engaged in any other phase of aeronautics, to purchase, lease or contract to operate the properties, or any substantial part thereof, of any air carrier;

(3) For any air carrier or person controlling an air carrier to purchase, lease, or contract to operate the properties, or any substantial part thereof, of any person engaged in any phase of aeronautics otherwise than as an air carrier;

(4) For any foreign air carrier or person controlling a foreign air carrier to acquire control, in any manner whatsoever, of any citizen of the United States engaged in any phase of aeronautics;

(5) For any air carrier or person controlling an air carrier, any other common carrier, or any person engaged

in any other phase of aeronautics, to acquire control of any air carrier in any manner whatsoever;

(6) For any air carrier or person controlling an air carrier to acquire control, in any manner whatsoever, of any person engaged in any phase of aeronautics otherwise than as an air carrier; or

(7) For any person to continue to maintain any relationship established in violation of any of the foregoing subdivisions of this subsection.

Power of Authority

(b) Any person seeking approval of a consolidation, merger, purchase, lease, operating contract, or acquisition of control, specified in subsection (a) of this section, shall present an application to the Authority, and thereupon the Authority shall notify the persons involved in the consolidation, merger, purchase, lease operating contract, or acquisition of control, and other persons known to have a substantial interest in the proceeding, of the time and place of a public hearing. Unless, after such hearing, the Authority finds that the consolidation, merger, purchase, lease, operating contract, or acquisition of control will not be consistent with the public interest or that the conditions of this section will not be fulfilled, it shall by order, approve such consolidation, merger, purchase, lease, operating contract, or acquisition of control, upon such terms and conditions as it shall find to be just and reasonable and with such modifications as it may prescribe: *Provided,* That the Authority shall not approve any consolidation, merger, purchase, lease, operating contract, or acquisition of control which would result in creating a monopoly or monopolies and thereby restrain competion or jeopardize another air carrier not

a party to the consolidation, merger, purchase, lease, operating contract, or acquisition of control: *Provided further,* That if the applicant is a carrier other than an air carrier, or a person controlled by a carrier other than an air carrier or affiliated therewith within the meaning of section 5 (8) of the Interstate Commerce Act, as amended, such applicant shall for the purposes of this section be considered an air carrier and the Authority shall not enter such an order of approval unless it finds that the transaction proposed will promote the public interest by enabling such carrier other than an air carrier to use aircraft to public advantage in its operation and will not restrain competition.

Interests in Ground Facilities

(c) The provisions of this section and section 409 shall not apply with respect to the acquisition or holding by any air carrier, or any officer or director thereof, of (1) any interest in any ticket office, landing area, hangar, or other ground facility reasonably incidental to the performance by such air carrier of any of its services, or (2) any stock or other interest or any office or directorship in any person whose principal business is the maintenance or operation of any such ticket office, landing area, hangar, or other ground facility.

Jurisdiction of Accounts of Noncarriers

(d) Whenever, after the effective date of this section, a person, not an air carrier, is authorized, pursuant to this section, to acquire control of an air carrier, such person thereafter shall, to the extent found by the Authority to be reasonably necessary for the administration of this Act, be subject, in the same manner as if such person were an air carrier, to the provisions of this Act

relating to accounts, records, and reports, and the inspection of facilities and records, including the penalties applicable in the case of violations thereof.

Investigation of Violations

(e) The Authority is empowered, upon complaint or upon its own initiative, to investigate and, after notice and hearing, to determine whether any person is violating any provision of subsection (a) of this section. If the Authority finds after such hearing that such person is violating any provision of such subsection, it shall by order require such person to take such action, consistent with the provisions of this Act, as may be necessary, in the opinion of the Authority, to prevent further violation of such provision.